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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/700,811	11/04/2003	Patrick Firmin August Delplancke	CM2706L	6265

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EXAMINER	
MRUK, BRIAN P	

ART UNIT	PAPER NUMBER
1751	

DATE MAILED: 06/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/700,811	DELPLANCKE ET AL.	
	Examiner	Art Unit	
	Brian P. Mruk	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *18 April 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-32* is/are pending in the application.

4a) Of the above claim(s) *2,4-7,18-27 and 29-32* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,3,8-17 and 28* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *4/22/04 & 11/4/03*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Claims 2, 4-7, 18-27 and 29-32 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on April 18, 2006. The examiner notes that instant claims 2, 4-7, 18-27 and 29, which are drawn to elected Group I, are withdrawn from consideration, since these claims are drawn to nonelected species (i.e. the species claimed in claims 2 and 4).

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical

Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1, 3, 8-17 and 28 are rejected under 35 U.S.C. 102(a) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Masschelein et al, WO 02/18528.

Masschelein et al, WO 02/18528, discloses a fabric care composition comprising a cationic silicone (see abstract), wherein the cationic silicone is represented by Structure 1 (see page 7, line 21-page 9, line 1), Structure 2a (see page 9, line 3-page 11, line 18), or Structure 3 (see page 11, line 19-page 12, line 28), per the requirements of the instant invention. It is further taught by Masschelein et al that the fabric composition also contains 0.01-20% by weight of a stabilizer, such as xanthan gum, carboxymethylcellulose, hyaluronic acid, and carrageenan (see page 16, line 4-page 19, line 3), and 0.01-80% by weight of surfactants (see page 19, lines 6-10). Specifically,

note Examples 2a and 2b. Therefore, instant claims 1, 3, 8-17 and 28 are anticipated by Masschelein et al, WO 02/18528.

In the alternative that the above disclosure is insufficient to anticipate the above listed claims, it would have nonetheless been obvious to the skilled artisan to produce the claimed composition, as the reference teaches each of the claimed ingredients within the claimed proportions for the same utility.

5. Claims 1, 3, 8-17 and 28 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Masschelein et al, U.S. Patent No. 6,903,061.

Masschelein et al, U.S. Patent No. 6,903,061, discloses a fabric care composition comprising a cationic silicone (see abstract), wherein the cationic silicone is represented by Structure 1 (see col. 5, line 19-col. 7, line 39), Structure 2a (see col. 7, line 40-col. 9, line 52), or Structure 3 (see col. 9, line 53-col. 11, line 7), per the requirements of the instant invention. It is further taught by Masschelein et al that the fabric composition also contains 0.01-20% by weight of a stabilizer, such as xanthan gum, carboxymethylcellulose, hyaluronic acid, and carrageenan (see col. 13, line 63-col. 16, line 35), and 0.01-80% by weight of surfactants (see col. 16, lines 38-60). Specifically, note Examples 2a and 2b. Therefore, instant claims 1, 3, 8-17 and 28 are anticipated by Masschelein et al, U.S. Patent No. 6,903,061.

In the alternative that the above disclosure is insufficient to anticipate the above listed claims, it would have nonetheless been obvious to the skilled artisan to produce

the claimed composition, as the reference teaches each of the claimed ingredients within the claimed proportions for the same utility.

6. Claims 1, 3, 8-12, 14 and 28 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Fender et al, US 2002/0068689.

Fender et al, US 2002/0068689, discloses a laundry detergent composition comprising a quaternary polysiloxane of Formulae (I), (IIa) or (IIb) (see abstract and paragraphs [0017]-[0037]), per the requirements of the instant invention. It is further taught by Fender et al that composition includes adjunct ingredients, such as surfactants, polymers, and stabilizers (see paragraphs [0059]-[0061]). Specifically, note the test formulation in paragraphs [0063]-[0071]), which disclose laundry compositions comprising various surfactants, carboxymethylcellulose (i.e. an anionic non-silicone-containing polymer), and various quaternary polysiloxanes. Therefore, claims 1, 3, 8-12, 14 and 28 are anticipated by Fender et al, US 2002/0068689.

In the alternative that the above disclosure is insufficient to anticipate the above listed claims, it would have nonetheless been obvious to the skilled artisan to produce the claimed composition, as the reference teaches each of the claimed ingredients within the claimed proportions for the same utility.

Double Patenting

7. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the

unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

8. Claims 1, 3, 8-17 and 28 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-20 of U.S. Patent No. 6,903,061. Although the conflicting claims are not identical, they are not patentably distinct from each other because Masschelein et al, U.S. Patent No. 6,903,061, claims a similar fabric care composition containing a cationic silicone (see claims 1-12 for the structures of the cationic silicones), surfactants (see claims 13-15), and 0.001-10% by weight of a stabilizer, such as gums and hydroxyl-containing stabilizers (see claim 17), as required in the instant claims. Therefore, instant claims 1, 3, 8-17 and 28 are an obvious formulation in view of claims 1-20 of U.S. Patent No. 6,903,061.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian P. Mruk whose telephone number is (571) 272-1321. The examiner can normally be reached on Mon-Thurs (7:00AM-5:30PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

BPM

Brian P Mruk
June 16, 2006

Brian P. Mruk

Brian P Mruk
Primary Examiner
Art Unit 1751